

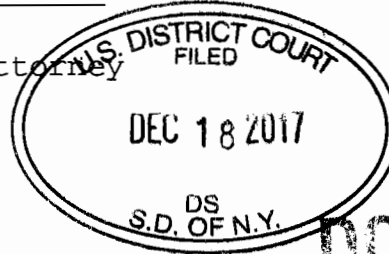
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ORIGINAL

Approved: _____

DOMINIC A. GENTILE

Assistant United States Attorney



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

DONALD KELLY,

Defendant.

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X

SEALED COMPLAINT

Violations of 18 U.S.C.
§§ 2422(b), 2251(a),
2252A(a)(5)(B), and 2

SOUTHERN DISTRICT OF NEW YORK, ss.:

AARON SPIVACK, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Enticement of a Minor to
Engage in Illegal Sexual Activity)

1. From in or about September 2017 up to and including in or about October 2017, in the Southern District of New York and elsewhere, DONALD KELLY, the defendant, willfully and knowingly, did use a facility and means of interstate and foreign commerce to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years to engage in sexual activity for which a person can be charged with a criminal offense, and attempted to do so, to wit, KELLY used the Internet to persuade, induce, entice, and coerce a minor, who has not attained the age of 18 years, to engage in sexual activity in violation of New York State Penal Law Sections 235.21(3), 235.22, 260.10, and 263.16.

(Title 18, United States Code, Sections 2422(b) and 2.)

COUNT TWO

(Sexual Exploitation of a Minor)

2. From on or about September 2017 up to and including in

or about October 2017 in the Southern District of New York and elsewhere, DONALD KELLY, the defendant, willfully and knowingly attempted to and did employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and for the purpose of transmitting a visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using a means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce, which visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and was actually transported and transmitted using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce, to wit, KELLY, induced a minor to participate in sexually explicit conduct for the purpose of producing a visual image of such conduct that was sent to KELLY over the internet.

(Title 18, United States Code, Sections 2251(a), and 2.)

COUNT THREE

(Possession of Child Pornography)

3. From on or about September 2017 up to and including in or about October 2017, in the Southern District of New York and elsewhere, DONALD KELLY, the defendant, knowingly did possess and access with intent to view, and attempt to possess and access with intent to view a book, magazine, periodical, film, videotape, computer disk, and other material that contained an image of child pornography that had been mailed, and shipped and transported using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, KELLY possessed images of child pornography, including images of a prepubescent minor who had not attained 12 years of age, on a smart phone device located in New York, New York.

(Title 18, United States Code, Sections 2252A(a)(5)(B), and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

4. I am a Special Agent with the FBI and have been so employed for approximately nine years. I am assigned to an FBI squad charged with enforcing federal laws prohibiting child pornography and other forms of child exploitation. As such, I have worked on numerous investigations and prosecutions involving minor victims and the adults who victimize these children. This affidavit is based upon my personal participation in the investigation of this matter, as well as on my conversations with other law enforcement officers and my examination of documents, reports, and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts I have learned during the investigation. Where the contents of documents or the actions, statements, or conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Overview

5. As described in greater detail below, based on my review of law enforcement reports and my conversations with law enforcement officers, I have learned, among other things, that between in or about September 2017, and in or about October 2017, two Instagram accounts were used to produce and receive child pornography from an Instagram account belonging to an eight year old female.

Investigation

Kelly Account-1

6. On or about September 26, 2017, law enforcement officers with the Trenton Ohio Police Department were notified by school officials that an eight year old female (the "Victim") had participated in online communications with an adult male, later identified as DONALD KELLY, the defendant, through Instagram.

7. Based on information obtained pursuant to a search warrant served on Instagram, my review of law enforcement reports, and my conversations with other law enforcement officers, I have learned the following:

a. On or about September 20, 2017, an individual, later identified as DONALD KELLY, the defendant, using an Instagram account ("Kelly Account-1"), and the Instagram vanity name ryanmurray3184, engaged in the following exchange of messages

with an individual, later identified as the Victim, who was also using an Instagram account (the "Victim Account"):

09/20/17 4:32AM	Kelly Account-1	Hi im Ryan beautiful pics ... good morning
09/20/17 1:43PM	Victim Account	Hi and thanks I'm Carsen
09/20/17 1:47PM	Kelly Account-1	So how old are you princess
09/20/17 1:47PM	Victim Account	I'm 8 how old are you
09/20/17 1:47PM	Kelly Account-1	Wow you really are hot for 8
09/20/17 1:48PM	Kelly Account-1	im 36 that ok I hope
09/20/17 1:48PM	Victim Account	yeah
09/20/17 1:49PM	Kelly Account-1	do you talk to grown men a lot
09/20/17 1:49PM	Victim Account	Well my dad
09/20/17 1:50PM	Victim Account	And my older brother he's 21
09/20/17 1:51PM	Kelly Account-1	do you want another pic of me
09/20/17 1:51PM	Victim Account	Ok
09/20/17 1:52PM	Kelly Account-1	Have you ever seen a grown man naked before
09/20/17 1:53PM	Victim Account	Yes my dad
09/20/17 1:53AM	Kelly Account-1	can i see naked
09/20/17 1:54PM	Victim Account	You can when I get home from shopping
09/20/17 1:54AM	Kelly Account-1	send me a pic with your mouth open
09/20/17 1:56pm	Kelly Account-1	would you touch my dick if you were with me right now
09/20/17 1:57AM	Victim Account	kinda
09/20/17 1:58pm	Kelly Account-1	have you ever touched 1 before
09/20/17 1:58AM	Victim Account	No

09/20/17 1:59pm	Kelly Account-1	i love your lips ... i cant believe your 8 years old
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b. On or about September 20, 2017, Kelly Account-1 sent the Victim Account several photographs, and a video of the genitalia of an adult male. Thereafter, Kelly Account-1 and the Victim Account participated in the following exchange of messages:

09/20/17 2:00PM	Kelly Account-1	did you like my video
09/20/17 2:00PM	Victim Account	Yes
09/20/17 2:01PM	Kelly Account-1	is my dick bigger than your dads
09/20/17 2:01PM	Victim Account	Yeah

c. On or about September 20, 2017, the Victim Account sent several photographs of the Victim's vaginal and anal areas to Kelly Account-1. Kelly Account-1 and the Victim Account participated in the following exchange of messages in connection with these images:

09/20/17 2:06PM	Kelly Account-1	so are you really taming [sic]all your cloths off for me when uour home [sic]
09/20/17 2:06PM	Victim Account	Yeah
09/20/17 2:07PM	Kelly Account-1	want to be my girlfriend lol
09/20/17 2:07AM	Victim Account	I will if u want
09/20/17 2:07PM	Kelly Account-1	i do

09/20/17 7:56PM	Kelly Account-1	hi
09/20/17 7:56PM	Victim Account	Ready?
09/20/17 7:56PM	Kelly Account-1	i am
09/20/17 7:57PM	Victim Account	Ok imma send a pic and do u know what I mean

09/20/17 7:59PM	Kelly Account-1	i sent it
09/20/17 7:59PM	Kelly Account-1	i do know
09/20/17 7:59PM	Kelly Account-1	Did you get it?
09/20/17 8:00PM	Kelly Account-1	omg wow that kooks so good
09/20/17 8:00PM	Kelly Account-1	looks
09/20/17 8:00PM	Victim Account	So now what should I send you
09/20/17 8:01PM	Kelly Account-1	can I see your tits
09/20/17 8:01PM	Victim Account	Ok
09/20/17 8:01PM	Victim Account	Now what
09/20/17 8:02PM	Kelly Account-1	your tits are big for 8 years old
09/20/17 8:02PM	Victim Account	I know
09/20/17 8:02PM	Kelly Account-1	I want to see your whole body
09/20/17 8:02PM	Victim Account	Even my butt
09/20/17 8:03PM	Kelly Account-1	i want a butt pic to
09/20/17 8:03PM	Victim Account	Ok don't send it to anyone
09/20/17 8:04PM	Kelly Account-1	no way just for me
09/20/17 8:04PM	Victim Account	Ok
09/20/17 8:05PM	Kelly Account-1	omg you are so sexy
09/20/17 8:05PM	Kelly Account-1	i wish my big dick was in your mouth

09/20/17 8:10PM	Kelly Account-1	more pussy open it up
09/20/17 8:12PM	Victim Account	Why are you screenshoting the pics I sent

09/20/17 8:12PM	Kelly Account-1	omg that is the best pussy i ever saw
09/20/17 8:13PM	Kelly Account-1	so i can jerk off later id that ok
09/20/17 8:13PM	Kelly Account-1	i love your 8 year old pussy

Identification of Donald Kelly

8. On or about September 20, 2017, Kelly Account-1 provided the Victim Account with the username associated with the Kelly Account-1 user's Snapchat account, which Kelly Account-1 identified as "rangerfan80."

9. Based on information obtained pursuant to a subpoena issued to Snapchat, I have learned the following:

a. Snapchat username "rangerfan80" is registered under the email address "barnyard169@gmail.com."

b. The Snapchat account holder provided telephone number 347-542-2996 (the "Subject Telephone") as a point of contact.

10. Based on information obtained pursuant to a subpoena issued to Google, Inc., I have learned that the email account bearing email address "barnyard169@gmail.com" is registered under the name "Don Kelly." The email account holder, "Don Kelly," provided the Subject Telephone as a point of contact.

11. Based on information obtained pursuant to a subpoena issued to T-Mobile US, Inc. ("T-Mobile") for the Subject Telephone, I have learned the following:

a. The Subject Telephone is registered to Donald Kelly at 1269 1st Avenue, Apartment 5D, New York, New York 10065.

b. The Subject Telephone was used to access Kelly Account-1 using various Internet Protocol ("IP") addresses.¹

¹ Every computer or device on the Internet is referenced by a unique Internet Protocol address the same way every telephone has a unique telephone number. An IP address is a series of four numbers separated by a period, and each number is a whole number between 0 and 254. Each time an individual accesses the Internet, the computer from which that individual initiates access is assigned an IP address.

12. Based on information obtained pursuant to a subpoena issued to Apple, Inc. ("Apple"), I have learned the following:

a. The email address "barnyard169@gmail.com" is registered for use with a Facetime account maintained by Apple. Apple identified the user of the Facetime account as "Donald Kelly" at 1269 1st Avenue, New York, New York 10065.

b. "Donald Kelly" listed the Subject Telephone as a point of contact in connection with his use of the Facetime account registered under email address "barnyard169@gmail.com."

13. Based on my participation in this investigation, and on information obtained from the New York State Department of Motor Vehicles ("DMV"), I have learned the following:

a. An individual by the name of "Donald Kelly," had previously been licensed to drive in New York State.

b. The individual in the photograph the DMV has on record for "Donald Kelly" is the same adult male in the photographs and video Kelly Account-1 sent to the Victim Account.

14. Based on information obtained pursuant to a subpoena issued to Facebook, and my review of law enforcement reports and documents, I have learned the following:

a. A Facebook account in the name of "Donny Kelly" was accessed through some of the same IP addresses the Subject Telephone used to access Kelly Account-1.

b. The photographs of the Facebook account holder "Donny Kelly," is the same adult male in the photographs and video Kelley Account-1 sent to the Victim Account, and the same individual in the DMV photograph of "Donald Kelly."

Kelly Account-2

15. Based on my participation in this investigation, my conversations with other law enforcement officers, and on information obtained pursuant to a search warrant served on Instagram, I have learned the following:

a. On or about September 24, 2017, an individual, later identified as DONALD KELLY, the defendant, using an Instagram account ("Kelly Account-2"), and the Instagram vanity name

"murrfromohio", engaged in the following exchange of messages with the Victim Account:

09/24/17 7:52AM	Kelly Account-2	hey its ryan forgot my password
09/24/17 12:45PM	Victim Account	Hey
09/24/17 12:46PM	Victim Account	Wanna see a quick pic of my pussy or no
09/24/17 1:22PM	Kelly Account-2	yes please
09/24/17 1:22PM	Victim Account	Ok
09/24/17 1:29PM	Kelly Account-2	do you want me to lick your pussy
09/24/17 1:29PM	Kelly Account-2	i love looking at it

b. The Victim Account subsequently sent several photographs of the Victim's vaginal and anal areas to Kelly Account-2, and Kelly Account-2 sent the Victim Account photographs and video of KELLY naked and masturbating. Thereafter, Kelly Account-2 and the Victim Account participated in the following exchange of messages:

09/24/17 1:34PM	Kelly Account-2	so perfect
09/24/17 1:35PM	Kelly Account-2	your pics are gonna make me cum soon
09/24/17 1:35PM	Kelly Account-2	my dick is so hard right now and big
09/24/17 1:52PM	Kelly Account-2	what are you doing
09/24/17 1:53PM	Victim Account	Nothing just laying down

09/24/17 2:01PM	Kelly Account-2	so sexy ... your ass is perfect and your only 8 years old
09/24/17 2:02PM	Kelly Account-2	im jerking off to you babe
09/24/17 2:11PM	Kelly Account-2	do you love my big dick
09/20/17 2:12PM	Victim Account	yeah do you like my a hole and my pussy
09/20/17 2:29PM	Kelly Account-2	do you want my dick in your mouth
09/20/17 2:45PM	Victim Account	Yes

09/24/17 4:20PM	Kelly Account-2	did you get my video
09/24/17 4:21PM	Victim Account	I will show you a picture of me naked in the mirror at night
09/24/17 4:21PM	Victim Account	Yeah
09/24/17 4:22PM	Kelly Account-2	did you like watching the cum shoot out
09/24/17 4:23PM	Kelly Account-2	ok babe you're the best girlfriend ever

16. Based on information obtained pursuant to a search warrant served on Instagram, my review of law enforcement reports, and my conversations with other law enforcement officers, I have learned the following:

a. The user of Kelly Account-2 created the account on September 24, 2017, and, at various times, used the Instagram vanity name "Donald Kelly."

b. The user of Kelly Account-2 provided the Subject Telephone as the user's point of contact.

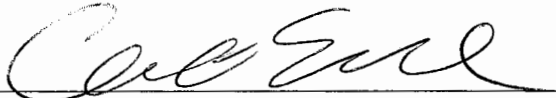
17. Based on information obtained pursuant to a subpoena issued to T-Mobile, I have learned that the Subject Telephone was used to access Kelly Account-2 using several of the same IP addresses that the Subject Telephone used to access Kelly Account-1.

18. Based on my participation in this investigation, and

my review of the photographs and video of the adult male sent to the Victim Account by the user of Kelly Account-1 and Kelly Account-2, I have learned that the same adult male appears in both sets of images, and in the DMV photograph of "Donald Kelly," as well as the Facebook account of "Donny Kelly."

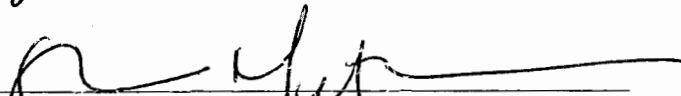
19. Based on my participation in this investigation, and my conversations with other law enforcements officers from the United States Postal Service, I have learned that DONALD KELLY, the defendant, receives mail at 1269 1st Avenue, Apartment 5D, New York, New York 10065.

WHEREFORE, the deponent respectfully requests that DONALD KELLY, the defendant, be arrested and imprisoned, or bailed, as the case may be.



AARON SPIVACK
Special Agent
Federal Bureau of Investigation

Sworn to before me this
18 day of December, 2017



HONORABLE SARAH NETBURN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK